

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**MARCH 8, 2011**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, Chairperson called meeting to order at 4:03 P.M.

**ATTENDANCE:**

**Members Present:** Rick Barnes                      James Moreno  
                                 Deland Davis                      Carlyle Sims  
                                 Greg Dunn                      John Stetler

**Members Excused:** Becky Squires and Mike Fatt

**Staff Present:**              Jill Steele, Deputy City Attorney  
                                 Glenn Perian, Senior Planner  
                                 Leona Parrish, Admin. Assistant, Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:** Removal of #Z-02-11 from Agenda per petitioners request to postpone until the next meeting.

**OLD BUSINESS:** None

*Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.*

**NEW BUSINESS:**

**Appeal #Z-3-11: (515 W. Michigan Avenue)**

Mr. John Stetler stated for the record this was a petition from Sunset Stores, Inc., Mr. Mohsen Sharif, 515 W. Michigan Ave., Battle Creek, MI 49037-2240. Request for a variance to waive the required 20 ft. front-yard setback and allow for construction of a fuel canopy to be placed 10 ft. from front property line. Parcel is zoned "C-3 Intensive Business District" commonly known as 515 W. Michigan Avenue, Parcel #6630-00-004-0. The permit application requested pursuant to Planning and Zoning Code, Chapter 1278.03.

Mr. Glenn Perian stated appeal #Z-3-11 is a petition from Mr. Mohsen Sharif seeking a dimensional variance to construct a fuel pump canopy 10' feet from a front property line at 515 W. Michigan Avenue. The property is located in the C-3 zoning district where a 20 foot front-yard setback is required. The subject lot is approximately 198' wide by 132' deep and meets the minimum lot standard for the C-3 zone. The building was originally constructed in 1960 and remodeled in 2008. A convenient store is currently in operation at the location and the Appellant would like to add a gasoline sales component to

the business. Staff is recommending approval of appeal #Z-3-11 based on the following findings and those listed in the staff report:

- 1) Staff believes the Appellant has clearly demonstrated that practical difficulty will exist if the variance is not granted in that the structure was built in its current location in 1960. Because of the location of the building the Appellant will have difficulty adding a fuel canopy to the front of the building in conformance with the setback requirements of the C-3 zoning district.
- 2) Staff does not believe the practical difficulty is self created in this case. The addition of gasoline sales will bring additional services to those in the neighborhood.
- 3) Staff finds that the practical difficulties are exceptional and peculiar to the subject property.
- 4) Staff does not believe the term practical difficulty is deemed financial hardship in this case. The property owner is planning on investing in the property by adding the gasoline component to the business.

Mr. Perian stated that based on these findings and those articulated in the staff report; the Planning Department is recommending approval of appeal #Z-3-11.

Mr. Perian noted that the Planning Department received today a document from a Mr. Ranbar Singh, owner of 420 W. Michigan Ave., having six signatures in opposition to the canopy project and that Mr. Singh is also in opposition.

Mr. Sharif & Mr. Fidel were present on behalf of their appeal. Mr. Fidel stated that when the building was purchased it was in poor condition and they had invested a lot of money into the property with intentions of also getting a license to sell beer and wine which was objected to by the neighboring childcare and was denied by the State; without that additional money they need to find other resources to stay in business. They have hired a company to do a survey and give an estimate for the project which was \$200,000 dollars that will be added to that location and need a variance to add a full pump canopy for their proposed fuel station; noted this will be an investment to the property. Mr. Fidel stated he just received the document with the persons objecting to the variance and said he did not know where they were from and are maybe persons they know and asked to sign the document in opposition that was provided at the meeting today. Said this was an important and vital issue for them, because without a gas station or beer and wine license which has been denied; the business cannot survive in that area.

Mr. John Stetler asked Mr. Fidel to state his name and address for the record. Mr. Fidel stated his name is Usef Fidel who is the petitioner's best friend and helped him construct the building at this location. Stated his business address of 196 N. 20<sup>th</sup> Street, Springfield, MI; and resides at 21060 Dane Drive, Battle Creek, MI.

Mr. Deland Davis stated he visited the place of business at 515 W. Michigan Avenue and that it is a very nice store; asked if the fuel pumps could be placed on the east side of the building rather than out in front. Mr. Fidel stated it is a matter of circulation; with persons coming and going in and out it is hard for them and that is why they wanted in the front. Stated they had the petroleum company draw the plans for the fuel pumps; it is their suggestion that the pumps be placed in the front with available parking on each side for the store patrons and would be very convenient.

Mr. Davis asked if with the gas pumps there would no longer be parking in the front of the building and would be only on the east and west side. Mr. Fidel stated no they have to be on the front because of the circulation for the cars that would pull in and park to get gasoline and use the other entrance to go out.

Mr. Carlyle Sims said he answered his question; if there was an egress on both sides on to Michigan Avenue. Mr. Fidel stated, yes.

Ms. Debbie Bedard, 10529 Core Drive, Portage, MI and is the Director of Education, Children Services at Community Action, who rents the adjacent property located at 493 W. Michigan Ave., stated they have concerns with the proximity of underground gas tanks next to their adjacent playground. Stated they are a Federally funded Headstart Program and are not only bound by the State of Michigan childcare licensing laws and all the testing they have to go through to make sure the environment is safe for the children; they also have the Federal guidelines that they have to follow. Stated they have been serving children in that building since 2001 and serve birth to 5 year old children on a daily basis, Monday through Friday.

Mr. Davis asked if the Childcare Facility was on the east side of applicant's property. Ms. Bedard stated, yes.

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE #Z-3-11 TO ALLOW A VARIANCE TO WAIVE THE REQUIRED 20 FT. FRONT-YARD SETBACK TO ALLOW FOR CONSTRUCTION OF A FUEL CANOPY TO BE PLACED 10 FT. FROM FRONT PROPERTY LINE FOR PROPERTY LOCATED AT 515 W. MICHIGAN AVENUE, BASED ON THE RECOMMENDATIONS AND FINDINGS IN THE STAFF REPORT; SUPPORTED BY MR. RICK BARNES.**

**Discussion:**

Mr. James Moreno stated he had concerns regarding the closeness of the Childcare's playground and that the petitioner stated they could move it over to the east side, but because of the convenience of the flow of traffic through; he is finding it very difficult at this point to say yes, grant this variance when it could have been moved and not need a variance.

Mr. Rick Barnes asked Mr. Glenn Perian, if in order to put in a tank they would need to follow the permit process; which he would assume it to be approved to be that close to a daycare. Mr. Perian stated there would not be anything in the Planning and Zoning code that would prohibit it; and he does not know if there are State requirements they would have to comply regarding proximity. Mr. Barnes asked if they would have to pass the State safety requirements before they could install the fuel tanks. Mr. Perian stated yes, that is correct.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; FOUR IN FAVOR (DAVIS, SIMS, STETLER AND BARNES); ONE OPPOSED (MORENO); AND ONE ABSTAINED BECAUSE OF A BUSINESS RELATIONSHIP(DUNN) MOTION APPROVED.**

Mr. Carlyle Sims stated he would think it would be of an advantage if the daycare would work with the petitioner and make sure there is a safety area for the children. Mr. Fidel stated they have tried to work

with the Daycare and have installed an 8 ft. privacy fence between their properties and will be installing the tanks away from the east side and they are trying do their best to be a good neighbor.

**APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE FEBRUARY 8, 2011 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. GREG DUNN ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.**

**COMMENTS BY THE PUBLIC:** None

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. John Stetler introduced his speech therapist a Ms. Alissa Harara; stated he is working with her to help him with his stutter and that she is a speech pathologist.

**ADJOURNMENT:** Mr. James Moreno made a motion for the meeting to be adjourned; all stated in favor, meeting was adjourned at 4:22 P.M.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department